



AMERICAN BENEFITS COUNCIL

June 13, 2011

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Re: Comment on Requirements for Fee Disclosure to Plan Fiduciaries and Participants - Applicability Dates

Dear Sir or Madam,

The American Benefits Council (Council) appreciates the opportunity to comment on the Department of Labor's proposed extension of the applicability date of the interim final rule concerning fiduciary-level fee disclosure and proposed expansion of the transition rule in the final participant-level fee disclosure regulations. The Council is a public policy organization principally representing Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The Council supports the Department's proposed changes. As the Department noted in the proposal, the extension of applicability date of the fiduciary-level fee disclosure regulation and the expansion of the transition rule in the participant-level fee disclosure regulation will more closely align the application of the two rules. As discussed more fully below, however, the Council is concerned that a further extension of the applicability dates of the fee disclosure regulations may be needed. The final regulations on fiduciary-level fee disclosure have not yet been published or sent to the Office of Management and Budget (OMB) for review. Service providers should be able to provide, and plan fiduciaries should be able to review, a single set of fee disclosure materials based on the final regulations. Unless those regulations are finalized in the very near future, we believe that a further delay will be needed.

Clarification of Proposed Expansion of Transition Rule

As a threshold matter, there is one point in the proposed amendment to the transition rule under the participant-level regulation where a clarification would be helpful. The existing transition rule provides that the initial disclosures otherwise required under

the portion of the regulation interpreting section 404(a) of ERISA may be furnished to existing participants within 60 days of the applicability date. The proposed amendment would extend the transition rule to all participants, including individuals who become eligible to participate after the applicability date, and lengthen its duration to 120 days. In practice, this would mean that plan administrators have 120 days after the applicability date to furnish the initial disclosures that are otherwise required under the section 404(a) portion of the final participant-level fee disclosure rule. This change is very helpful.

However, the proposed participant-level fee disclosure regulation also amends the existing regulations under section 404(c) of ERISA. In particular, the proposed amendment provides that a participant in a section 404(c) plan will be treated as having sufficient information to make informed investment decisions only if the participant receives the information required pursuant to the section 404(a) participant-level fee disclosure regulation. The section 404(c) amendment does not clearly pick-up the timing rules under the section 404(a) regulation and the preamble to the proposed extension states that “[t]he amendments to the Department’s 404(c) regulation apply for plan years beginning on or after November 1, 2011. The [proposed extension of the transition rule] would have no effect on the applicability of [the 404(c)] amendments.” Some have read this statement to suggest that the new disclosures must be provided immediately when the regulations are applicable in order to maintain section 404(c) status, *i.e.*, the expanded transition rule is unavailable for section 404(c) purposes. It seems apparent that this was not intended and we believe it would be appropriate for the Department to confirm that a section 404(c) plan may rely on the transition rule (and all of the timing rules in the section 404(a) regulation) to the same extent as a non-section 404(c) plan.

Possible Further Effective Date Extensions

As mentioned above, we urge the Department to be cognizant of the interaction between the applicability date of the interim final regulations on fiduciary-level fee disclosure and the date on which non-interim final regulations are published. As of the date of this letter, the Department had not yet published the final regulation or sent it to the OMB for review. This suggests that there may be little time between publication of the final rule and the applicability date under the interim final rule. Plan fiduciaries and service providers should not be forced to comply with two rounds of rule changes. Any other approach would be wasteful and unnecessarily burdensome.

For these reasons, we urge the Department to stand ready to take steps to ensure an orderly transition. Unless the final fiduciary-level fee disclosure regulations are published in the very near future, the Council believes that a further extension in the applicability date of the interim final regulations is appropriate. Even if the changes from the interim final regulation are fairly modest, it is essential that plan service

providers have a reasonable opportunity to comply with the non-interim final regulations.

We also note that any delay in the publication of final fiduciary-level fee disclosure regulations would necessitate a delay in the participant-level fee disclosure regulations. As the Department's proposed extension reflects, allowing the participant-level fee disclosure regulations to be effective before the fiduciary-level fee disclosure regulations would be "putting the cart before the horse." It is important that fiduciaries have the tools they need to obtain the information necessary to satisfy their obligations under the participant-level fee disclosure regulation. The final fiduciary-level fee disclosure regulations provide these tools and these regulations should be applicable prior to the effective date of the participant-level fee disclosure regulations.

Need for Further Guidance

Finally, we note that there are a number of interpretive questions relating to the Department's fee disclosure regulations. We understand that the Department is considering further guidance (whether formal or informal) addressing these issues and we urge the Department to do so as quickly as possible. The Council anxiously awaits publication of the final target date fund regulations which will help to complete the participant-level fee disclosure regulations.

We also recommend that the Department publish relief from its electronic delivery regulation to allow a more flexible approach to paperless disclosure of the information required under the participant-level fee disclosure regulations. Our particular recommendations are described in detail in the Council's response to the Department's recent Request for Information on the appropriate standards for electronic disclosure.

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Again, we appreciate the opportunity to comment on the proposed extensions. We believe that the American Benefits Council offers an important and unique perspective of both the employer-sponsors of retirement plans and the service providers that assist them, and we look forward to working with you on these important changes.

Sincerely,



Jan M. Jacobson
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American Benefits Council